

REMARKS

By this amendment, claims 1-25 are pending, in which no claims are canceled, withdrawn from consideration, currently amended, or newly presented. No new matter is introduced.

The final Office Action mailed July 7, 2008 rejected claims 1-22 and 24 under 35 U.S.C. § 102(b) as anticipated by *Duske, Jr. et al.* (US 6,992,991), and claims 23 and 25 as obvious under 35 U.S.C. § 103 based on *Duske, Jr. et al.* (US 6,992,991), in view of *Lebel et al.* (US 6,740,075).

The rejection of claims 1-22 and 24 under 35 U.S.C. § 102(b) is respectfully traversed.

A rejection for anticipation under section 102 requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. *See Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

Independent claim 1, for example, recites, *inter alia*, “storing a first information element in a device log in the telemetry device; determining whether the first information element includes a first priority level indication; **storing the first information element in a first data structure** in the telemetry device **when it is determined that the first information element includes the first priority level indication**; storing a second information element **in the device log**; determining whether the second information element includes a second priority level indication; storing the second information element in **a second data structure** in the telemetry device **when it is determined that the second information element includes the second priority level indication.**”

The Office Action cites col. 28, lines 1-9, of *Duske, Jr. et al.* for the storing of both the first and second information element in a device log., and cites col. 20, lines 40-63, of the reference for determining whether the first and second information elements include first and second priority level indications, respectively.

Respectfully, the rationale of the Final Action is flawed, as *Duske, Jr. et al.* does not disclose what it is purported to disclose. The cited portion of 20 relates to a software context of interfaces to the software of a mobile communication system as depicted in FIG. 7A. As is indicated in that cited portion, a “message proforma” is a template that defines the contents of a message to be transmitted over a network, as well as the processing required for, or by, the message. The “priority,” at which messages using this message proforma should be sent, is an attribute of the proforma object. The cited portion of col. 28 relates to message logs:

The software requirements in this section relate to the Message Log object. A message log in this context is an object that contains a list of message objects. The software will maintain five message logs:

- Incoming Message Log (IML)
- Outgoing Message Log (OML)
- Network Message Log (NML)
- Saved Message Log (SML).
- Data Message Log (DML).

As is clear from these portions of *Duske, Jr. et al.*, message logs are maintained and templates defining the contents of a message have, as one attribute, a predetermined priority at which messages using that template should be sent. However, nothing therein discloses **storing** a first information element **“in a first data structure in the telemetry device when it is determined that the first information element includes the first priority level indication”** and **“storing the second information element in a second data structure in the telemetry device when it is determined that the second information element includes the second priority level indication,”** as claimed. That is, *Duske, Jr. et al.* fails to disclose the storage of

two different information elements in two different data structures and, more importantly, storing these elements in response to a specified condition, i.e., “**when it is determined that the first information element includes the first priority level indication**” and **when it is determined that the second information element includes the second priority level indication.**” *Duske, Jr. et al.* specifies no such condition of first and second information elements including, respectively, a “first priority level indication” and a “second priority level indication” prior to storing these information elements. The template, or message proforma, in *Duske, Jr. et al.* requires a message in this format to have a priority at which a message is sent, but the **determination** that a message, or information element, includes this priority is not a precondition for storing the message, or information element, in a first or second data structure.

Independent claims 15, 22, and 24 contain similar features are for the reasons above, are also not anticipated by *Duske, Jr. et al.*

The above arguments, anent claim 1, are even more germane with regard to independent claim 8; for example, where it is very clear that the data log is separate from the data structure in the recitation of “a first data structure, **other than the device log**, including the first information element which includes a first priority level indication; a second data structure, **other than the device log**, including the second information element which includes a second priority level indication.” *Duske, Jr. et al.* clearly fails to disclose first and second data structures different than, or “**other than the device log**,” and the Office Action, at pages 6-7, explaining the rejection of claim 8, appears to ignore this claim feature.

Since each and every element of the claims is not taught by *Duske, Jr. et al.*, no *prima facie* case of anticipation has been established and the Examiner is respectfully requested to withdraw the rejection of claims 1-22 and 24 under 35 U.S.C. § 102(b).

With regard to the rejection of claims 23 and 25 under 35 U.S.C. § 103, since *Lebel et al.* does not provide for the deficiencies of *Duske, Jr. et al.*, as explained above, no *prima facie* case of obviousness has been established with regard to these claims.

Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 23 and 25 under 35 U.S.C. § 103.

Therefore, the present application, as amended, overcomes the rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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Date

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